



Issue Date: 11 March 2009

CASE NO.: 2009-ERA-00003

In the Matter of:

JAMES F. NEWPORT,
Complainant,

v.

BP NORTH AMERICA PRODUCTS, INC.,
Respondent.

ORDER OF REMAND

This case has been brought by the Complainant under the employee protection provisions of Section 211 of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §5851. Complainant alleges the Respondent terminated his employment in retaliation for issues relative to Process Safety Management (PSM) OSHA rules, as well as BP procedures and matters directly affecting nuclear safety.

This complaint was filed with the Secretary of Labor on January 7, 2009, alleging Respondent retaliated against him on October 17, 2007. The Complainant had previously filed an identical complaint against Universal Plant Services, *Newport v. Universal Plant Services*, 2008-ERA-00009.

On February 11, 2009, the Complainant sent an email to OSHA requesting this case be consolidated with his previous case against Universal Plant Services. On February 17, 2009, the Secretary, by the Regional Administrator for the Occupational Safety and Health Administration (OSHA), acting on Complainant's request, dismissed the complaint to allow the Complainant the opportunity to join the complaint with the others alleging the same or similar issues. OSHA directed the matter be consolidated with 2008-ERA-00009, and forwarded the matter to the Office of Administrative Law Judges for action. OSHA took no action with regard to a full investigation into the merits of this particular matter and the issue of timeliness of filing was not addressed.

The Complainant filed a “Notice of Appeal and Objections to Findings Under Energy Reorganization Act” and a “Motion to Consolidate Hearing and For Joinder of Defendants” on February 19, 2009, again stating his desire to have the cases consolidated.

On February 24, 2009, the undersigned received a faxed transmission from the Complainant entitled “Complaint’s (sic) Election to Remove Case to Federal Court Jurisdiction” in the Universal plant Services matter. The undersigned issued an “Order Closing File” on February 26, 2009, thereby ending this court’s jurisdiction over the Universal Plant Services case, 2008-ERA-00009.

Since there is no longer a matter to consolidate with at this level, this matter is **HEREBY REMANDED** to the Regional Administrator for the Occupational Safety and Health Administration (OSHA) for further investigation into the merits and timeliness of the allegations.

IT IS SO ORDERED.

A

ROBERT B. RAE
Administrative Law Judge

Signed in Washington, D.C. on March 10, 2009.